REMARKS

The Examiner has rejected claims 1-7 and 10-12 under 35 U.S.C. § 102(b) as being anticipated by the article by Xiang et al. (1996) ("Xiang"). The Examiner has also rejected claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over the article by Huang et al. (1995) ("Huang") in view of Xiang. Claims 1 and 2 have been amended. Claims 13-24 have been withdrawn. Claims 25-28 have been added. Claims 1-28 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner's outstanding rejections to current claims 1-12 and 25-28. An early Notice of Allowance is therefore requested.

I. SUMMARY OF RELEVANT LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a prima facie case of obviousness and must show that the references relied on teach or suggest all of the limitations of the claims.

II. REJECTION OF CLAIMS 1-7 AND 10-12 UNDER 35 U.S.C. § 102(B) BASED ON XIANG

On page 2 of the Office Action, the Examiner rejects claims 1-7 and 10-12 under 35 U.S.C. § 102(b) as being anticipated by Xiang. This rejection is respectfully traversed and believed overcome in view of the following discussion.

With respect to this rejection, the Examiner contends that Xiang discloses "deletion mutations of the highly conserved amino acids PPPPYV, of the p2b region in the Rous sarcoma virus Gag protein." The Examiner further contends that the "DNA constructs of the deletion mutations were made by PCR with mutagenesis primers as listed in Table 1 on pate 5698." The Examiner therefore contends that Xiang anticipates claims 1-7 and 10-12. However, this misconstrues the teachings of Xiang.

Claim 1

Claim 1 states:

> "A DNA molecule comprising a nucleic acid comprising a deletion mutation of the budding mediating motif of a viral protein encoded by the nucleic acid,
>
> "wherein the viral protein is associated with the virus budding process, and
>
> "**wherein the viral protein is not a protein of the Rous sarcoma virus.**" (emphasis added)

Xiang teaches only to the Rous sarcoma virus ("RSV"). However, the Applicants have discovered that the current invention applies to many viruses other than RSV. See Application, ¶ [0065], Table 1. Accordingly, applicants have amended Claim 1 such that "the viral protein is not a protein of the Rous sarcoma virus." Since Xiang only teaches to RSV, Xiang does not disclose all of the limitations of Claim 1.

As such, Applicants respectfully assert that Examiner has failed to establish a prima facie case of anticipation of independent Claim 1, and corresponding claims 2-12 because they are dependant from independent Claim 1. Therefore, Applicants respectfully request that Examiner remove the rejection of claims 1-12 under 35 U.S.C. § 102(b) as being anticipated by the article by Huang et al. (1995).

III. REJECTION OF CLAIMS 8 AND 9 UNDER 35 U.S.C. § 103(A) BASED ON HUANG IN VIEW OF XIANG

On page 3 of the Office Action, the Examiner rejects claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Huang in view of Xiang. This rejection is respectfully traversed and believed overcome in view of the following discussion.

Claims 8 and 9 are ultimately dependent upon Claim 1. As Claim 1 is allowable, so must be claims 8 and 9. Therefore, Applicants respectfully request that Examiner remove the rejection of claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over the article by Huang et al. (1995) in view of the article by Xiang et al. (1999).

IV. NEW CLAIMS 25-28

Claims 25-28 are ultimately dependent upon Claim 1. As Claim 1 is allowable, so must be claims 25-28. In addition, claims 25-28 contain additional limitations not disclosed in either of the references cited to by the Examiner. Therefore, Applicants respectfully assert that claims 25-28 are in allowable form.

Based upon the above remarks, Applicants respectfully request reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicants' attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,

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